

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of

MANHATTAN COLLEGE,

Employer,

- and -

Case No. 2-RC-23543

MANHATTAN COLLEGE ADJUNCT FACULTY
UNION, NEW YORK STATE UNITED TEACHERS,
AFT/NEA/AFL-CIO,

Petitioner.

**RESPONSE TO REGIONAL DIRECTOR'S
ORDER TO SHOW CAUSE**

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On remand, petitioner Manhattan College Adjunct Faculty Union, New York State United Teachers, AFT/NEA/AFL-CIO provides this submission in accordance with the Order to Show Cause dated February 20, 2015 ("February 20 OSC"), in which the Regional Director invited the parties to submit a legal position on whether the National Labor Relations Board ("Board") should exercise jurisdiction in this matter, in view of the Board's decision in *Pacific Lutheran University*, 361 NLRB No. 157 (2014).

To address the questions referenced in the February 20 OSC, petitioner submits that based on the conclusive evidence in the existing record, the Region should re-assert jurisdiction under the standards set forth in *Pacific Lutheran*. There is no basis or cause to reopen the record, as the applicable facts and evidence – which are cogently described in the Regional Director's January 10, 2011 decision – are already present in the record. Further, there has been no change in the operative facts needed by the Region to make its jurisdictional decision. Thus, it is time to count the ballots

and allow the petitioned-for employees to exercise their rights under the National Labor Relations Act.

ARGUMENT

Even if Manhattan College meets *Pacific Lutheran*'s threshold requirement that the College holds itself out as providing a religious educational environment, it is petitioner's legal position that the Board should exercise jurisdiction under *Pacific Lutheran* because Manhattan College's representations to students, faculty members, and the community at large show that Manhattan College does not hold out the petitioned-for faculty members as performing a specific role in creating or maintaining a religious educational environment.

In the January 10, 2011 decision, the Regional Director summarized substantial evidence which shows that Manhattan College does not hold out the petitioned-for faculty members as performing a specific role in creating or maintaining a religious educational environment. This evidence includes, *inter alia*, the job application for faculty at Manhattan College and the application for student admissions ("Admissions Brochure"), which do not connote to faculty or students that the petitioned-for faculty plays any role in creating or maintaining a religious educational environment.

Contained in the job application for adjunct faculty is the college mission statement. *See* Regional Director Decision dated January 10, 2011 ("January 2011 Decision"), at 9. Therein it states that:

...The mission of Manhattan College is to provide a contemporary, person-centered educational experience characterized by high academic standards, reflection on faith, value and ethics, and life-long career preparation. This is achieved in two ways: by offering students programs which integrate a broad liberal education with a concentration in specific disciplines in the arts and sciences or with professional preparation in business, education and engineering; and by nurturing a caring, pluralistic campus community.

See January 2011 Decision, at 10. This information in the job application resembles the representations to students in the Admissions Brochure, wherein prospective students are informed that “[t]he mission of Manhattan College...is unchanged: to provide a person-centered, contemporary educational experience characterized by high academic standards, reflection on values and principles, and preparation for a dynamic, lifelong career.” January 2011 Decision, at 7-8. Further, the Admissions Brochure notifies prospective students that the applicable learning style “means that your teachers are exceptional, devoted to a personal approach that centers on you and your success. That what you learn is both practical and cutting-edge... .” January 2011 Decision, at 7.

As stated in the “by-laws of the Board of Trustees of Manhattan College...[,] the ‘purpose of the corporation shall be the promotion of education.’” January 2011 Decision, at 3. Per “the Mission Statement distributed to job applicants,” Manhattan College’s educational focus in on “excellence in teaching, respect for individual dignity, and commitment to social justice.” See January 2011 Decision, at 23.

Notably, “[i]nside the [Admissions] Brochure, the Application for Admission contains no reference whatsoever to religion, faith, or the Church.” January 2011 Decision, at 8. The “Trustees Report” included with the job application elucidates why the admissions application, which students fill out and submit, does not have any mention of religion:

As an institution of higher learning, however, the mission of the College within the Church is strikingly different from that of the parochial schools and Catholic high schools where indoctrination in the faith and insistence on religious observance is seen as part of their mission. Implicit in church approval to function as a College is the recognition that [the College] must first be a college with characteristic academic freedom for teachers to pursue research and to present the truth as they see it with critical and professional objectivity.

See January 2011 Decision, at 13. Moreover, the Trustees Report signals to job applicants that:

There is no intention on the part of the Board [of Trustees], the administration, or the faculty to impose Church affiliation and religious observance as a condition for hiring or admission, to set quotas based on religious affiliation, to require loyalty oaths, attendance at religious services, or courses in Catholic theology.

See January 2011 Decision, at 12. In fact, “[t]he primary criteria for hiring faculty are their academic qualifications, and...the College has long had a non-discrimination policy with respect to its hiring.”

January 2011 Decision, at 15. Not only are adjunct faculty hired based on academic qualifications, “their contract requires [them] to fulfill ‘academic obligations’” – again representing to faculty that they are uninvolved in any religious educational environment. *See* January 2011 Decision, at 20.

The Trustees Report provided to job applicants reaffirms Manhattan College’s “commitment to academic freedom...[and] to diversity and to freedom [of] conscience and religious liberty of each member of the Manhattan College community.” *See* January 2011 Decision, at 10. In this matter, the Regional Director previously recognized that:

Included among the “General Principles for Implementation of the College’s Mission” are the provisions that “the College affirms its commitment to academic freedom and responsibility, and to institutional autonomy, which are requisites for its effective functioning and the achievement of its Mission,” and “the College, blessed with a diverse student body, faculty and staff from different faiths and traditions, all of whom make valued contributions to the mission and enrich each other intellectually, socially and spiritually, affirms its embrace of this diversity and its commitment to freedom of conscience and to the religious liberty of each member of the College community.”

January 2011 Decision, at 6. This is akin to *Pacific Lutheran*, 361 NLRB No. 157 at 13, where the Board asserted jurisdiction and recognized that Pacific Lutheran University welcomed the diversity of its faculty, stating in a flyer that “[w]e embrace diversity with great joy. On our campus we have professors, staff, and students of every race, many nationalities, different Christian traditions, different faiths, or no faith... .” The presence of such evidence here supports the finding that Manhattan College does not hold out faculty as performing a role in creating or maintaining a religious educational environment.

Furthermore, a booklet containing the mission statement and Trustees Report (“Introduction Booklet”) informs potential hires that Manhattan College “is independent or private, neither controlled by the state or the Church.” *See* January 2011 Decision, at 13-14. A letter in the Introduction Booklet explains to job candidates that “[o]ver the years, an evolution has taken place in faculty representation. The predominantly Christian Brothers faculty has been replaced by predominantly lay teachers, and includes both men and women.” *See* January 2011 Decision, at 14. This reiterates to faculty that they do not have a role in creating or maintaining a religious educational environment.

Also, Manhattan College represents to students, faculty, and the community at large that the petitioned-for faculty does not create or maintain a religious educational environment, based on the College’s continued receipt of aid from New York State under the Bundy Law. *See* January 2011 Decision, at 23; <http://www.highered.nysed.gov/oris/bundy/> (last visited Mar. 10, 2015); N.Y. Educ. Law § 6401(2)(a)(iv). The Bundy Law “forbid[s] public aid to sectarian institutions” and provides that institutions which receive aid under the Bundy Law “may not require courses in religious doctrine or philosophy.” *See* <http://www.highered.nysed.gov/oris/bundy/> (last visited Mar. 10, 2015). That alone supports a finding that the faculty at issue does not create or maintain a religious

educational environment; but the definitive evidence and testimony regarding adjunct faculty not having a role in a religious educational environment only hammers home this point.

Aside from the evidence discussed in the Regional Director's January 2011 Decision, there is other evidence in the record which further demonstrates that Manhattan College does not represent to faculty that they are to create or maintain a religious educational environment. Testimony from adjunct faculty consistently and conclusively showed that Manhattan College does not represent to current or potential faculty members that they have a role in a religious educational environment.

At the pre-election hearing held before Hearing Officer Robert Guerra, adjunct faculty from the sociology, psychology, and religious studies departments testified that the interview and hiring process did not reference the teaching of religious education. Randolph Schutz ("Schutz"), who teaches psychology, stated that for the job interview "the only things [he] remember[ed] talking about with [the interviewer] Dr. Freedenberg were things pertinent to the teaching of psychology" (R. 645-47).¹ Also Andy Korall, a sociology adjunct faculty member, testified that he "wasn't hired to teach religious values and belief systems" (R. 370, 373-74, 399).

At an interview for a position in the religious studies department, Michael Ewing ("Ewing") indicated he was informed that "there was a remarkable amount of freedom" in the department, including in terms of creating and structuring a course that covered "three major world religions" (R. 681-82). Ewing explained that the course he would ultimately teach – "The Nature and Experience of Religion" – focused on "present[ing] three major world religions [Buddhism, Islam, and Christianity] in an academic context" (R. 703). Ewing acknowledged that there was a mention of "the Catholic nature of the school" in the interview, but clarified that it was "in the context of the importance of recognizing...that we had complete academic freedom in the Religious Studies

¹ References to the record of the pre-election hearing are identified as R. ____.

Department...[and] that it did not impinge or impact how we structured our course, how we taught” (R. 682-83). Ewing emphasized that the takeaway from the interview was that “[w]e were academics” (R. 683). Further, Ewing stated that neither in the interview nor subsequent to the interview did Dr. Claudia Setzer – his interviewer and chair of the religious studies department – indicate that Ewing should embrace Catholic heritage (R. 681, 684).

Dr. Joseph Fahey (“Dr. Fahey”) confirmed that faculty candidates for the religious studies department are not asked about Lasallian tradition or whether they are comfortable with that tradition in interviews (R. 459, 461). Dr. Fahey also testified that interviewers do not tell potential faculty that they are expected to embrace Lasallian tradition (R. 461).

Manhattan College’s representations to faculty – in terms of their non-involvement in a religious education environment – are no different after hiring. Schutz and Ewing testified that neither department chairs nor anyone else at Manhattan College have ever told them that they must teach students about Lasallian tradition or St. John Baptist de La Salle (R. 652, 689). Schutz stated that in his classes, he does not talk about De La Salle or the Lasallian tradition of education (R. 651). Moreover, Schutz and Ewing explained that students do not ask them about Lasallian tradition or De La Salle (R. 651, 687-88). More broadly, Korall testified that from conversations with other adjuncts, it was his impression that other adjuncts had the view that they were at Manhattan College “to work at a job, to teach my discipline, not to teach some kind of religious [doctrine]” (R. 381, 399). This was a view that Korall shared with other adjunct faculty (R. 381).

Coinciding with Ewing’s testimony, Employer’s Exhibit 42 shows that “[t]he approach to the courses in [the religious studies] department is academic.” In Employer’s Exhibit 42, the head of the religious studies department explained that “[t]he department disavows any attempt to indoctrinate students or to proselytize [sic] for or against any particular religious faith” and that

courses are designed to “have an educational value in terms of understanding the role of religion in the historical and contemporary situation of man... .” Moreover, even Manhattan College’s witness, Dr. William Merriman, testified that faculty members are not required to introduce faith, values, or ethics of Catholic principles into classes (R. 327).

Pacific Lutheran shows that the foregoing testimony supports the exercise of jurisdiction in this matter. A factor in the Board’s decision to exercise jurisdiction in *Pacific Lutheran* was that contingent faculty members testified “that there was no discussion about religion, in any context, during their interviews, no requirement that course material requires a religious component and no requirement that they perform any function in support of a religious educational environment.” 361 NLRB No. 157 at 13-14. These are the very same circumstances present in this matter concerning adjunct faculty at Manhattan College.

Still, the best indication that Manhattan College does not hold out the petitioned-for faculty as performing a role in creating or maintaining a religious educational environment may be Manhattan College’s own statements and arguments in this matter. On page 29 of Manhattan College’s December 10, 2010 post-hearing memorandum, the employer averred:

The witnesses for the College made it clear that Manhattan College respects academic freedom for the faculty, does not discriminate against students or employees of other faiths (or of no faith), and respects the beliefs and practice of other religions. (*see* Resp. Exh. 16). In return, as former President Brother Thomas Scanlan explained in his presentation to new employees (Resp. Exh. 17), the College asks that those who accept employment at Manhattan College understand that it is a Catholic College and that its identity and mission are to be respected by all who join the community. While the College encourages and promotes participation in the Catholic life of the College, it respects individual choices and comfort levels. (*Ibid.*)

Manhattan College must be held to its own statements. By averring, *inter alia*, that Manhattan College respects “individual choices” and “academic freedom for faculty,” even Manhattan College’s

declarations support that the adjunct faculty are not held out as creating or maintaining a religious educational environment, nor are they required to do so.

No matter how Manhattan College may try to couch its arguments in this matter, petitioner submits that any information Manhattan College might offer as justification for reopening the record merely mirrors the evidence, documentation, and arguments already contained in the comprehensive record. And to the extent that Manhattan College argues that the current record is suffice to decide this matter in favor of the employer, meaning the record should not be reopened, it can be seen from petitioner's thorough discussion of the evidence that the Region should re-assert jurisdiction.

Thus, based on the evidence in the record, it is readily apparent that Manhattan College's representations to students, faculty, and the community at large do not demonstrate that the petitioned-for faculty performs a specific role in creating or maintaining a religious educational environment. As the Regional Director previously held, "[b]ecause adjunct faculty are not required to advance a religious mission in any way, exercising jurisdiction over [Manhattan] College will not have any 'potential effects' leading to unconstitutional entanglement." January 2011 Decision, at 20.

CONCLUSION

Accordingly, the record should not be reopened and the Region should re-assert jurisdiction over Manhattan College, in accordance with *Pacific Lutheran*.

Dated: New York, New York
March 13, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

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